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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JAY LLOYD HARRIS,

Defendant and Appellant.

G039774

(Super. Ct. No. 06CF4116)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, David A. Hoffer, Judge. Affirmed as modified.

William D. Farber, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Ronald A. Jakob and David Delgado-Rucci, Deputy Attorneys General, for Plaintiff and Respondent.

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THE COURT:^{*}

This appeal does not challenge the judgment; rather, it argues the sentencing minute order and the abstract of judgment do not accurately reflect the trial court's oral pronouncement and therefore must be corrected. The Attorney General concedes the point, and we agree.

I

The facts, to the extent they are relevant to the issue raised on appeal, are simply stated. Appellant Jay Lloyd Harris was recruited over the Internet to cash money orders provided by companies supposedly located in Nigeria and other African states for a fee. Even though he knew the money orders were fakes, he attempted to cash them at several local businesses and banks. When the police searched his residence, they found numerous packages containing fake checks and money orders; they also found a scanned check and other documents belonging to his landlord.

The jury found Harris guilty on three counts: second degree burglary (count one), forgery (count two), and possession of a forged instrument (count four). The jury also found him not guilty on one count: possession of a forged instrument (count three). Unfortunately, sentencing in this case has been star-crossed.

II

The trial court initially sentenced Harris to four years in prison on count one (mid-term of two years doubled to four years for a prior strike). The problem is that the court misidentified count one on the record as the "fictitious instrument count" instead of the second degree burglary count; and it sentenced him to a four-year term on count three, for possession of a forged instrument, the count on which the jury had found him not guilty.

When the court recognized its error, it held another hearing a few weeks

^{*} Before Sills, P. J., Rylaarsdam, J., and Ikola, J.

later on December 14, 2007 at which it vacated the erroneous sentence as to count three and made other corrections. The trial court emphasized it was merely clarifying the sentence: the inadvertent misidentification of count one did not change the calculation of the sentence on that count; and, there was no change in the total sentence imposed because the vacated sentence on count three was to run concurrent with the sentence on count one.

The court clerk, however, completed the minute order and abstract of judgment incorrectly. Even though the court had stated it was staying the sentence on count two pursuant to Penal Code section 654, the clerk entered a minute order and filled out the abstract of judgment showing the sentence on that count running concurrent to the sentence on count one. The abstract also omitted to state Harris had been convicted by jury on count four.

Harris complains on appeal that the minute order and the abstract of judgment do not accurately reflect the trial court's oral pronouncement of sentencing and that they must be corrected to conform to it because the court's oral pronouncement of sentence controls over them. The Attorney General properly concedes the point. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185 ["An abstract of judgment is not the judgment of conviction; it does not control if different from the trial court's oral judgment and may not add to or modify the judgment it purports to digest or summarize"].) Because it is important to the proper administration of judgment "that courts correct errors and omissions in abstracts of judgment," we will remand the matter to the superior court and direct the clerk to make the appropriate corrections. (*Ibid.*)

III

And then, after most of the briefing had been completed, Harris noticed something else: the December 14, 2007 minute order indicated the court had held a "re-sentencing" hearing.

Harris advised the trial court by letter that because this had been a "re-

sentencing” hearing he was entitled to additional presentence credits up to the time of the hearing. His position was that so long as he had not been actually sentenced until December 14 he was entitled to presentence credits up to that date. The minute order’s statement that this had been a re-sentencing hearing, and the abstract of judgment’s statement the date of sentencing was December 14, is, in his analysis, presumptive proof it had been a re-sentencing hearing and of his entitlement to additional presentence credits. He made the same argument in appellant’s opening brief.

Apparently in response to counsel’s letter, the trial court entered a minute order ordering a nunc pro tunc correction of the abstract of judgment “showing the actual date of sentence to read as 11/30/2007.” In his appellant’s reply brief, Harris concedes the correction moots out his argument as to additional presentence credits. But in a cautionary footnote, Harris adds that “if the newly-amended abstract of judgment does not conform to the trial court’s order of July 17, 2008, appellant may seek leave of the Court to file a further brief in respect to the calculation and award of presentence custody credits.” That is a bridge to be crossed, if at all, at a later date.

IV

The matter is remanded to the clerk of the superior court to make the corrections in the abstract of judgment in accordance with the opinions expressed in this opinion, prepare a new abstract of judgment, and immediately forward a certified copy of the new abstract to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.